

The Legal Framework for the Creditor Recourse against the Guarantor in Financial Guarantee. A Study under Jordanian Civil Law.

2014

الأحكام القانونية لرجوع الدائن على الكفيل في الكفالة بالمال

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إعداد

أوس محمد جرار

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تاريخ مناقشة الرسالة

2014 /5 /4

فهرس المحتويات

(992-950)

المطلب الأول :

التزام الأصيل و الكفيل من ذات المرتبة

(427)

(284)

.26

183 2007

.188

(3) (1) 1973 .298

3. أنظر في هذه الدراسة ص 7 هامش رقم (3).

المطلب الثاني:

رجوع الدّائن على الكفلاء في حال تعددهم

1. أنظر صابر محمد محمد سيد، رجوع الدائن على الكفيل، دار الكتب القانونية، مصر – القاهرة، 2010، ص 351.

.2

(974) ... [1] ...

(974) ... [2] ...

(974) ... [3] ...

(974) ... [4]

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[1] ... .94 ...

.52 ... .1998 ... (1) ...

[2] ... .60 ...

[3] ... .114 ...

[4] ... .129 ...

3. [illegible]

[illegible] (974) [illegible]

4. [illegible]

[illegible]

[1] [illegible] 89.

[2] [illegible] 95

[3] [illegible] 60.

[4] [illegible] 115.

(976)

(1/528)

(457)

[1] .93

[2] 15 ... .163 1983

[3] .130

[4] (795)

[5] .35

[6] (457)

المطلب الثالث:

وقت رجوع الدائن على الكفيل

:Ĭ ǚǇƙǁǁǫ ƘѲĜDŽǁǫ

üǐƬǓǫ üĜƽ üǐƧǀǁǫ ĂǂƳ ƱǇǟƥǁǫ Ĭ ʒ DžǝƐǬǁǫ ƽѲ ĂǂƳ ɣǬƥƐǇǁǫ ǀ ƐƅǇǚƙƗƨǛǫ

ɣǚž ǇǚžĜɯƙǚž!ƒ Džǂơ Ŏƽ ýŏƽǂ!ƒ ýƶŋ ƥƥ ŎǀƥƧǛƒ ƳƧƬǚž!ƒ ǇǇ ýĂǛƒ Ɣǁ ƱǚžĜ!ƒ ƚơǁ ƥǀƵ ǇŏǁǇ

ǇĂǂŏ ǁ!ǁǚĂ ǛĜƶǚž ĜǚžŋƙǁĜƱǚž ĂǇ ýŏƽǂ!ƒ ĂǇ ǇŏƥǚžĜ!ƒ Ĝǚžǫ ƚǁĜƱǚž ýŏƱƙƪŏ ǇƑƒƥ!ƒ ǇǇ ǐǇ ǛǇŏƥ!ƒ Ŏƽ Ǉŏƥǚž!ƒ

Ĭ ǁƵ ǇĂǂŏ ýŏƽǂ!ƒ Ĭ ǁƵ ƒǙǇ ǇƑƒƥ!ƒ ƳĂŋƧ ýǇ Ǉǂ! Ă [1].ǇŏƥǚžĜǁ! ǇƙǁĜƱǚž ýǁƥ Ĭ ƙơ ýŏƽǂ!ƒ ƚǁĜƱǚž ǇƑƒƥǁ!

ýŏƱƙƪŏ ǛýŏƬǛƒ ýǁƥ ýŏƽǂ!ƒ Ĭ ǁƵ ƳĂŋƧ!ƒ Ŏƽ ǇƑƒƥ!ƒ ƽơ Ĭ ǁƵ ǀƥƧƒĂ ƘƒĈĜǇƙƪƒ ǁĜǇǇ ǇǇ ǇǇ ǛǇƥǖƱǫ

ÞǇŏƥǚž!ƒ ýǁƥ ǇŏǁƵ ǇƵĂŋƧ ýĜơ Ŏƽ ǇŏǁƵ ǇƑƒƥ!ƒ ƳĂŋƧ Ĝǚǁ ɣƽƥŏ ǇǇ ýŏƽǂ!ƒ

Ŏǀƥǚž!ƒ ǇĂǀĜǀ!ƒ Ǉǚž (972) Ă (971) ƥƒĂǚž!ƒ ƒ ĂƬǀ ǀĈƒƧƥ Ǉǚž ƥǁ Ǔ ýƋĜƪƙ!ƒ ƒǙǇ ƚǁĜŋǗ

Džǀǐ !ǁǇ Ǜƚ!Ĝƽǂ!ƒ ýǁƥ ŎǀŏƵ ǇŏǚžǚƙǁĜǁƛĂǚž Ǉŏƥ!ƒ ǇĜǂ ƒǙ " Ĭ ǁƵ (971) ǀƥĜǚž!ƒ ƒ ǀƙ ƚŏơ .ŎǀƥƧǛƒ

Ă ƒǙǇ ."ǇŏƥǁǇ! ƚǀƛĂǚž!ƒ ýƒĂǚžǛƒ Ĭ ǁƵ ǙŏƽǀƙǇ!ƒ ýǁƥ ýŏƽǂ!ƒ ýƒĂǚžǇ Ĭ ǁƵ ǙŏƽǀƙǇ!ƒ ƨĂŋŏ ǖƽ .ƑǚžǄƑƬƚǄ üǐƧǀǁǫ

!ǁ ƑǄ ýŏƽǂ!ƒ Ĭ ǁƵ ǇƵĂŋƧ ýǁƥ ýŏƽǂ!ƒ ýŏƽǂ Ĭ ǁƵ ɣŋƧŏ ǇǇ ǇƑƒƥǁ! ƨĂŋŏ Ǔ" Ĭ ǁƵ (972) ǀƥĜǚž!ƒ ƒ ǀƙ

."ǇǀɣǄ ƑǚžǄƑƬƚǄ Džǀǐ

Ĭ ǁƵ ƳĂŋƧ!ƒ Ŏƽ ǇƑƒƥ!ƒ ƽơ Ĭ ǁƵ ǀƥƧƒĂ ƘƒĈĜǇƙƪƒ ǁĜǇǇ ǇǇ ǛǀǖƵǇ ǇŏƬǀ!ƒ Ǉǚž Ơɯƙŏ

ƤǐƧǚžƚǁǫ üĜƽ üǐƧǀǁǫ üƐǇǄǚž ĂǂƳ ƤǐƧǚžƚǁǫ ƦƐǇǟ !ǬƳ Ŏƽ ýƛǚžƙƙ ƘƒĈĜǇƙƪǗƒ ǀǙǇ ǇǇ Ă ǛǇŏƥǚž!ƒ ýǁƥ ýŏƽǂ!ƒ

ƤǐƧǚžƚǁǫ üĜƽ üǐƧǀǁǫ üǐƧǀ üƐǇǄǚž ĂǂƳ ƤǐƧǚžƚǁǫ ƦƐǇǟ !ǬƳ Ǉ .(üǇǓǫ ƒǂƯǄǁǫ) Ĭ ǚǐɣǁǫ ǄǐǄǄƚǁǫ üѲǄ ĂǂƳ

.(Ĭ ǚǇƙǁǁǫ ƒǂƯǄǁǫ) üǐƧǀǁǫ üƐǇǄǚž ĂǂƳ

---

[1] ƧƯǀƥ . Ŏƽ ǀǙǇ ƒƧƥ!ƒ ƚƪ ƒ 16 ǚžĜǇ ƫ ǄƥƧ (4).

[1] [illegible]

[illegible]

[illegible]

المطلب الأول:

عدم جواز التنفيذ على أموال الكفيل قبل التنفيذ على محل التأمين العيني

[illegible] (971) [illegible]

[illegible] 1. [illegible]

[illegible] 2. [illegible] 3. [illegible]

[illegible]

1. [illegible]

[illegible]

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[1] [illegible] 43.

.82

.216

(1340)

.3

(971)

.131

.161 1986

[illegible][1]

[illegible] (971) [illegible]

[illegible][2]

[illegible] (791) [illegible]

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1. [illegible] 76.
2. [illegible] 2004/3254 [illegible] 2005/2/14 [illegible] 2006/2223 [illegible] 2007/8/26 [illegible] 1991/765 [illegible] 1992/2/16.

المطلب الثاني:

عدم جواز التنفيذ على أموال كفيل الكفيل قبل التنفيذ على أموال الكفيل

[illegible] (967) [illegible]

[illegible]

[illegible] (972) [illegible] (967) [illegible] (967) [illegible]

[illegible]

[illegible]

[illegible]

[illegible][1] [illegible]

[illegible] (972)

[illegible]

[illegible] (967) [illegible]

(972) [illegible]

[illegible]

[illegible]

[illegible]

[illegible][2] [illegible]

[illegible] (972) [illegible]

---

1. [illegible] 217.

2. [illegible] (139-138).

[1] 217

[illegible] (788) [illegible]

[illegible]

[illegible][1] [illegible][2] [illegible][3] [illegible][4] [illegible]

[1] [illegible] 115.

[2] [illegible] 589.

[3] [illegible] 53.

[4] [illegible] 104.

1. [illegible] .82

2. [illegible] .114

[1] .137

[2] .117

[3] .86 85

(342)

.153

.139

(330)

.(2) 121

[illegible]

[illegible]

المطلب الأول:

الدفع بانقضاء الإلتزام الأصلي بأحد أسباب انقضاء الإلتزام

[illegible]

[illegible] (993) [illegible]

[illegible] (1004) [illegible] [1]

[1] [illegible] .219

[illegible]

[illegible]

[illegible]

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1. [illegible] ص 89.
2. [illegible] ص 247.
3. [illegible] ص 131.
4. [illegible] ص 216 (1).
5. [illegible] ص 89.

[illegible] (1/356) [illegible] [2] [illegible]

[illegible] (2/356) [illegible]

[illegible] (355) [illegible] [3] [illegible] .2 [illegible] .1 [illegible]

[illegible] [4] [illegible]

[illegible] (358) [illegible]

[illegible]

1. [illegible] 484.
2. [illegible] 236.
3. [illegible] 249.
4. [illegible] 220.

:2

(448)

.199 [1]

.125 [2]

.(1) 77 [3]

.230 [4]

3: [illegible]

[illegible] (449) [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible][2]

[illegible]

[illegible]

[illegible]

[illegible][3] [illegible]

[illegible]

[illegible][4]

[illegible]

[illegible]

[illegible] (1/464) [illegible]

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1. [illegible] ص 235.
2. [illegible] ص 72.
3. [illegible] ص 226.
4. [illegible] ص (231-232).

المطلب الثاني:

الدفع بانقضاء الإلتزام الأصلي بسبب نقص أهلية المدين

[illegible]

[illegible] [1]

[illegible] (168) [illegible]

[illegible] [2] [illegible]

[illegible] [3]

1. [illegible] 1998/451 [illegible]
2. 171 [illegible]
3. [illegible] 86 [illegible] 30 [illegible] 340 [illegible]

ƒ ǀǩ Ǥǆǂ ."ýĂƽǂǆ!ƒ ǈǊþǆ!ƒ ǉƦƽǉǊ Ǆ! ƒƦ Ǆƒƨƙ!Ǘƒ ƦǊƽǉƙǊ ǤǆƨǊǆ ǈǤǂ ǂǊǊǋǛƒ ƒ ǀǉ ƔǊƪǊ ǂ!Ǥƽǂ!ƒ ƘǉǤǂ

ǋƙǊǊǋǅ ƒ ǀǉ ĂǋǊ ǈǊþǆ!ƒ ǋǊ ǋƙơǒ ǐƦ!ƒ ǋƞĂ!ƒ ǈǤǂ ƒƦ ... " ǏǊƵ ǈĂǉǤǀ!ƒ ƘƒƦ ǈǆ (2/782) ǉþǤǆ!ƒ

."ǋƞĂ!ƒ ƒƦǋǊ ǋƙơǒ ǈǅ ǋ! ƩǊǊƽ ǛþþǤƶƙ!ƒ ƘþĂ ǀ!Ʀǉ Ǥǆ!ǤƵ ýǒƽǂ!ƒ ǈǤǂĂ

ƧǊƙ ǐƨƮǆ!ƒ ǑǉþǆǓƒ ǈĂǉǤǀ!ƒ Ǒƽ ǂǊǋǛƒ ƒ þǤǉ Ǆƒƨƙ!ƒ ǂ!Ǥƽǂ ǈǅ ǉǘƵǅ ǈǊƮǉ!ƒ ǈǆ ƠưƙǊ

: ǑǋǊ ƯĂƧƽ!ƒ ǉƦǋĂ [1]ǛǂƛǘƛǤưĂƧƽ

Ǆǐơ Ǆ hǐǂǉǆ ƫ ƾǤ !ƒƳ þǐƷ üǐƨǀǆ ǄǋǊǀǐ Ǆǆ :ǗǋǊ

ǈĂǂǒ ƯƨƽǇƒ ƒƦǋ Ǒƽƽ ǛǋƙǊǊǋǅ ƒ ǀǉǊ Ǆ!ǤƵ ƧǒƹĂǋĂ ǂǊǊǋǛƒ ƒ þǤǉ ýƽǂ þþ ýǒƽǂ!ƒ ǈǤǂ ƒƦǆƽ

ǈǅ ýǒƽǂǆ! ǈǅ Ǆǆǂơǘƒ ǉƦǋ ǈǆĂ .ǂ!Ǥƽǂ!ƒ Ǆǆǂơǅ ýǒǆƞ ǋǊǊƵ ǐƨǀƙ Ă ǛǤǊƮǅ ǤǉǊþǆ Ǜ ǘǒƽǂ ýǒƽǂ!ƒ

þǀƶ!ƒ ýǆƱǊǊ ǀ ǀǆƙǒ ǈǅ ýǒƽǂ!ƒ ýǆƱƙǀǒ ǀ!Ʀ ǏǊƵ Ă ǛǑǊƮǛƒ ǈǊþǆ!ƒ ǤǋǊ ǀ ǀǆƙǒ Ǒƙ!ƒ ƳĂƽþ!Ǥǉ ǀ ǀǆƙǒ

Ʃǒ!Ă ǘǒƽǂ ǈĂǂǒ ǂ!Ǥơ!ƒ ǉƦǋ Ǒƽ ýǒƽǂ!ƒ ǈǅ ǤǆǊĂ .ǈǊþǆ!ƒ ǂǊǋǅ ƒ ǀǉ ƔǊƪǊ ǈǊþǆ!ƒ Ă ǈƒþ!ƒ ǈǊǊ ǐƦ!ƒ

ǀ ǀǆƙ!ƒ ýǒƽǂ!ƒ ǈǤǂǆǊ ǈƽƽ ǛǑǊƮǛƒ Ǆƒƨƙ!ǘ! ýǊǤƙ (ýǒƽǂ!ƒ) ǋǆƒƨƙ!ƒ ǈǅ ǤǆǊ Ă ǛǈǊþ!ƒ Ǒƽ ǤǊǊƮǅ ǤǉǊþǆ

ƒ ǀǉ! ǀ!ƦĂ ǛǋǊ ǀ ǀǆƙǒ Ǆ! Ăǅ (ǂǊǊǋǛƒ ƒ þǤǉ) ǑǊƮǛƒ ǈǊþǆ!ƒ ǋǊ ǀ ǀǆƙ ǀƒĂǀ ǑǊƮǛƒ þǀƶ!ƒ ýǆƱǊǊ

þƧƞǆǊ ýǒƽǂ!ƒ ǄƧǊǒ " ǐƨƮǆ!ƒ ǑǉþǆǓƒ ǈĂǉǤǀ!ƒ ǈǆ (2/782) ǉþǤǆ!ƒ ƘƮǉ ǀ!Ʀ ǏǊƵĂ .ǈǊþǆ!ƒ ǂǊǋǅ

[2]."Ǆǐơ ƒǋǤ ƛǂƟǐ Ǐǂǀ ǉǊǋǛ ǋǐǄǋǤ þƨǄǐ Ǆǆ ǉǀǋ ǛǈǊþǆ!ƒ ǀǤƒƧǊ

Ǆǐơ Ǆ hǐǂǉǆ ƫ ƾǤ ƒǄƳ üǐƨǀǆ ǄǋǊǀǐ Ǆǆ :ƒǐǆƒƙ

ýǒƽǂ!ƒ ǈĂǂǒ ƯƨƽǇƒ ƒƦǋ Ǒƽƽ ǛǋƙǊǊǋǅ ƒ ǀǉǊ Ǆ!ǤƵ ĂǋĂ ǂǊǊǋǛƒ ƒ þǤǉ ýƽǂ þþ ýǒƽǂ!ƒ ǈǤǂ ƒƦ

Ǜǫ Ǜǂ!Ǥƽǂ!ƒ Ǆǆǂơǅ ýǒǆƞ ǋǊǊƵ ǐƨǀƙĂ .ǤǊƮǅ ǤǉǊþǆ ƩǒǀĂ - ýĂǛƒ ƯƨƽǇƒ Ǒƽ ĂǋǊ Ǥǆǂ - Ǥưǒǅ ǘǒƽǂ

[1]. ƧǗǉǅ ƒƨƧƩǇ ǉƨ ƾƒƨƧ ǀǉǋĂƨǐ Ǜ ǆƧǆǋƞǊ ǤǀǤƾǛ ǈǤǋǊǊǆƙǆ!ƒ ƘǊǂƮǒƮ ǂ Ă ǉǐǊǋǋǉ ƫ (1) ƒ 39. Ă ǅǒưǤ ǉǊǋǋǉ ƫ (1) ƒ 43. ĂǉǉƧ ǂƦǀ
ƒ 46.

[2]. ǆƮƵƨǐ ǆǊƮĂƧǛ ǆƧǆǋƞǊ ǤǀǤƾǛ ƒ 37.

[illegible] [1] [illegible]

[illegible] [2]

[illegible]

[illegible] (777) [illegible] [3]

1. [illegible] 43.

2. [illegible] 45.

3. [illegible] 83.

المطلب الأول :

الدفع بانقضاء الكفالة مع بقاء التزام المدين قائما

[illegible]

1. [illegible] (128 – 129).
2. [illegible] 65.
3. [illegible] 236.
4. [illegible] 69.
5. [illegible] 264.
6. [illegible] 182.

(2035)

1. .236
2. .67
3. .181
4.
5. .263

المطلب الثاني:

دفوع ناشئة عن تقصير الدائن

(978)

1. (786)

2. .94

3. .237

4. .255

1.

2.

3. (967)

4. Cŭ5ǂ!ƒ ꞵꞵƶƙ ýĜơ Ŏ5 ƽƧ5 ꞵƥ ŎǉꞵƧŰƒ ΥƧƬdž!ƒ ǈǅ ǂƪƒƧꞵ!ƒ ǉǨǋ ýǚƤ ǈǆž Ǵưŏǅ Ơưƙƒ Ǵdžǂ

ǈŏꞵ!ƒ ý5ǂ ƒǨ ǋǈǅ ǂŏơ Üǂ5ƙƤdž ꞵĂǀƵ Ŏ5 ǅǅ ꞵơƒĂ ꞵǀƵ Ŏ5 ǈŏꞵ!ƒ ƒĂ5ǂ ꞵƥ Cŭ5ǂ!ƒ ǈǆǂ ǈǪ

ýǂ ýƥ ǈǇƒꞵ!ƒ ƽơ ǈĂǂŏ5 Üýǀƙƪdž ꞵǀƶ ǈŏꞵ!ƒ ý5ǂ ꞵƥ ǅǌǉdž ꞵơƒĂ ýǂ ǈǆǂ Ă ýŏ5ǂ ǈǆž Ƨƛǂǅ

ƒĂ5ǂ ꞵƥ ƒĂǉǆǂ Ă ýŏ5ǂ ǈǆž Ƨƛǂǅ ǈŏꞵ!ƒ ý5ǂ ýĜơ Ŏ5 Ǵdžǅ .ꞵƧ5ǉdž!ƒ ýŏ5ǂ!ƒ ýƥ ǋǀơǂ ǅǌǉdž ꞵơƒĂ

ƱĂƧƬ ƘƧ5ƒĂƙ ƒǨ ǁ!Ʀ Ă ÜǋƙƮơ Ɣƪơ ýǂ ǅǌŏƵ ǅƪǀǉŏ ǈŏꞵ!ƒ ǈƷ5 Üꞵơƒ Ă ꞵǀƵ Ŏ5 ǈŏꞵ!ƒ

.ǂƪƒƧꞵ!ƒ ǉǨǋ ƱƧƶdž Ŏ5 Ǵǌŏ!ǫ ǀƧĜƬŰƒ Ƙdžƙ ǂǉŏƶdž

5. ΥĂɳƧ!ƒ Ŏ5 ƽơ!ƒ ǈǇƒꞵ!ƒ Ơǉdž ꞵƥ ŎǉꞵƧŰƒ ΥƧƬdž!ƒ ǈǆǂ ǈǪ Ă ǋǅ ǂƪƒƧꞵ!ƒ ǉǨǋ ýǚƤ ǈǆž ǈŏƙ

ƦƤŏ ǆ! ǁ!Ʀǂ ǈǆǂ ǈǪ Ă Ü(ýĂ5ǂdž!ƒ ǈŏꞵ!ƒ ýɳǅ ƽĜǀơƙƪƒ ꞵƶ) CĜƬŏ ƘƥĂ ĭǅ Ŏ5 ýŏ5ǂ!ƒ ĬƵ

ꞵƥ (ŎǉꞵƧŰƒ ΥƧƬdž!ƒ) ǋǅ Ůǫ ÜĭƧƮdž!ƒ ΥƧƬdž!ƒ ýƶ5 Ǵdžǂ ǂdžĜƵ ǀꞵƵĜǀǂ ꞵŏƧɳƙ!Ǵ ƴƽꞵ!Ǵ

ǉǨǋĂ ÜǋŏƵ ǈǇƒꞵ!ƒ ΥĂɳƧ Ǵǌ ƴƽꞵŏ ǈǅ ýŏ5ǂ!ƒ ƴŏƱƙƪŏ Üƽơ!ƒ ƒǨǋ ĬƵ ƘƒCǈƛƙƪƒ ƴưĂ

.ŎǉꞵƧŰƒ Ŏǉdž!ƒ ǈĂǉĜǀ!ƒ ǈǆž (972) Ă (971) ꞵƒĂdž!ƒ ǴǌŏƵ ƘƮǉ ꞵƥ ƘƒCǈƛƙƪŰƒ

6. ƴƽꞵŏ ǈǅ ƴŏƱƙƪŏ ΥĂ5ꞵ ǀꞵƵ ýŏ5ǂ!ƒ Ơǉdž ꞵƥ ŎǉꞵƧŰƒ ΥƧƬdž!ƒ ǈǅ ǂƪƒƧꞵ!ƒ ǉǨǋ ýǚƤ ǈǆž Ơưƙƒ

ƴǈĜƙ ǆƒƨƙ!ƒ ĂǋǇ ýŏ5ǂ!ƒ ǆƒƨƙ!ƒ ǈĂǂ) ǈŏꞵdž!ƒ ǆƒƨƙ!Ǵ ƽƶƙdž ĂǋǇ Ǵdž Ǵǌǉdž ÜǈǇƒꞵ!ƒ ǂǌɳƒĂdž Ŏ5 Ǵǌ

Ǵdžƒƨƙ!ƒ ýŏ5ǂ!ƒ ǆƒƨƙ!ƒ ǈǆǂ ǈǪ Ă ǋǉŰ ǁ!Ʀ Ă Üýŏ5ǂ!ƒ ǆƒƨƙ!Ǵ ꞵdžƙƪdž Ǵdž Ǵǌǉdž Ă (ŎƮŰƒ ǆƒƨƙ!ű!

. ƒ ƑĜƮƤ ǈǆž ǉƧŏƺ! Ǵdž ǋ! ǋƙƒƦ ǆƑĜƥ ǆƒƨƙ!ƒ ǋǅ Ůǫ ÜŎƮŰƒ ǆƒƨƙ!ű! Ǵŏƶƙ

ǆǋǅ ƟƒƧƙƥŮ ýǀƙǉǉ Üǂƪƒ ƧƂ!ƒ ǉǨǋ Ǵǌŏ!ǫ ƘƮĂƙ Ŏƙ!ƒ ǊƑĜƙǉ!ƒ ǆǋǅ ǈǆž CĜǌƙǉŰƒ ꞵƶ Ă ǈŰƒ

.Ǵǌ ƦƤŰƒ ŎǉꞵƧŰƒ ΥƧƬdž!ƒ ǈǆž ǂơǴ!ƒ ýdžŏ Ŏƙ!ƒ Ă ƘĜŏƮĂƙ!ƒ

ثانياً: التوصيات:

1. [illegible] (971) [illegible] (1/967) [illegible]

[illegible]

[illegible] (971) [illegible]

Ƚ!Ǵơ) Ǐ!ĂǕƒ Ƚŏ Ț Ăƙ!ƒ Ŏ5 ǸŎ!ç ƧǴTdž!ƒ Ă ǸǸŏƥƶƙ ƟƧƙǀdž!ƒ (971) ƖƥǴdž!ƒ ƒ Ǉ Ăǌ5 (ýŏǫǂ!ƒ

.(ŎǇŏƵ ǇŎdžǆƙ ƥĂȠĂ

ƱǁƐƥDŽǁƐ ƜDŽǝƑƷ

ƒƗǀǁƐ :Űǋǆ

Ǐ ǅǋǅƑƾǁƐ Ǉƾǁƽǁƛ ƒƗǀ .ǆ

1. ƥǅơ ƲǅǕƘ ƞƀƨƥ ƔǀƆ ƷŐ ƙǅǀƗǍǀŵƾǁƒ ƙǅǀƥǅǁƒ (1) Ʊ ƨƒƥ ƗǀƓǁƒ ƨƕǆǀƜ ƝƀƨƜ ƁƗ ƘƀƨƀƁ ƲǀƘǀǍǂ ǀǍǀǕǀ

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.1960

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.2000

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.2010 ǛǁƨǆǀǁƒƓ

7. Ʊ Ʀ(ǍǅƘǀŰƒ ǀǀǀǁƒ Ɠ ǍǀƥǅǁƒƓ ƗǀƖǀǁƒ ǀǍǀ ƗǀƨǀǀǅƘ Ɨǀƒƨƥ) ƗǀƷƗǁƒ ǛƥǅƹǅƘǀǀƹ ƾǀƤǁƒ ƥǀƸ

.1986 ǛƨƮǅ ƲǅǕƘ ƗǍƨƥǀƗǀŰƒ ǛƗƳǀǀǁƒ ƨƬǀ ƨƒƥ Ʀ(1)

8. Ɠ ƗǍƮƤƬǁƒ ƙǀǀǍǅǀƘǁƒ) ƥǍƥǆǁƒ ǍǀƥǅǁƒƓ ƗǀƖǀǁƒ ƟƨƬ ŐƷ ƱǍǀƓǁƒ ǛǏǀƓǀǀǀǁƒ ƾƒƨƸǁƒ ƥǀƸ

.1973 ǛǀǀǀǀƗ ƲǅǕƘ ƞƀƨƥ ƨƒƥ ƗǀƒƨƘǁƒ ǀǀǋƥ ƨƒƥ Ʀ(1) Ʊ ǛƨƬƺǁƒ ǀƸǆǁƒ Ʀ(ƗǀǍǀǋǁƒ

DžĜŽ NJŋĂŀ Džƒƨƙ!Ǘƒ ŧōƧǓǉ Üƥōƥŋ!ƒ Ǒǉƥdž!ƒ LJĂǉĜl!ƒ ƟƧƬ Ǒ5 Ʊōƪ Ă!ƒ ÜĭƧĂǌǉƪ!ƒ ƭƒƨƨ!ƒ ƥŀŽ .9

ƘĂƧōŀ ÜǑŀƧƨ!ƒ ŧƒƧƙ!ƒ ƇĜōơƺ Ƨƒƥ Ü(1) Ʊ Üŧ!Ĝƛ!ƒ Ƈƨŋ!ƒ Ü(ƇĜư ǉǉǗƒ Üŧ!ƒĂơ!ƒ ÜƧĜƬĂǕƒ)

.1973 ÜLJĜǉŀ! ǇJ

ŧōƧƥǉǂƪǗƒ Üŧ5Ĝlƛ!ƒ ƧƬǉ Ƨƒƥ Ü(1) Ʊ Üŧōǉōƨ!ƒ Ă ŧōƬƤƬ!ƒ ƘĜǉōdžƾƙ!ƒ ÜǑpĜŀ!ƒ ƥŀŽ ƟĜƙƽ!ƒ ƥŀŽ .10

.1984 ÜƧƬdž ǇJ

Ă ƧƬǉƿ! ŧ5Ĝlƛ!ƒ Ƨƒƥ Ü(1) Ʊ Ü(Ǒǉƥdž!ƒ LJĂǉĜl!ƒ Ǒ5 ƭơ!ƒ ƧĜƛƈ) Džƒƨƙ!Ǘƒ DžĜǂơƊ ÜƧĜƽ!ƒ ƧƥĜl!ƒ ƥŀŽ .11

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.1985 ÜLJĜǉŀ! ǇJ ƘĂƧōŀ ÜǑŀǉơ!ƒ ǏƽƱƬdž ŧƺŀƱdž Ü(1) Ʊ Üŧ!Ĝƽǂ!ƒ ƥlŽ ÜǏōơō ƥĂƥĂ!ƒ ƥŀŽ .12

Ü(1) Ʊ Ü(ŧ!Ĝƽǂ!ƒ Üŧ!ĜǂĂ!ƒ Üŧ!ĂĜldž!ƒ) ǉĜdžƪdž!ƒ ƥĂlƺ!ƒ ÜǑǉƥdž!ƒ LJĂǉĜl!ƒ ƟƧƬ ÜLJĜơƧƪ!ƒ LJĜǉƥŽ .13

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- ƧŀĂƙǂD 6 ŧǉōƥdž ÜƧƬdž ŧưǌǉ ŧƺŀƱdž Ü(1) Ʊ Üŧōǉōƨ!ƒ Ă ŧōƬƤƬ!ƒ ƘĜǉōdžƾƙ!ƒ ÜDžĜdžƺ ƥdžơdž .14

.1985 ÜƧƬdž

.1984 ÜƧƬdž ǇJ ŧōƧƥǉǂƪǗƒ Üŧ5Ĝlƛ!ƒ ƧƬǉ Ƨƒƥ (1) Ʊ ÜǉĜdžƪdž!ƒ ƥĂlƺ!ƒ ÜǑƪƧdž ýdžĜǂ ƥdžơdž .15

ÜŧōŀƧƺ!ƒ ŧưǌǉ!ƒ Ƨƒƥ Ü(1) Ʊ Üŧōǉōƨ!ƒ Ă ŧōƬƤƬ!ƒ ƘĜǉōdžƾƙ!ƒ Ǒ5 ƩĂƧƥ ÜƔǉƬ Ɣōŀ! ƥdžơdž .16

.1975 ÜƧƬdž ǇJ lƧǌĜl!ƒ

ÜDžƒƧǌǕƒ ƴŀĜƱdž Ü(3) Ʊ Üŧōǉōƨ!ƒ Ă ŧōƬƤƬ!ƒ ƘĜǉōdžƾƙ!ƒ Ǒ5 ƩĂƧƥ ÜǑǂƨ LJōƥ!ƒ ýĜdžŋ ƥĂdžơdž .17

.1980 ÜƧƬdž ǇJ lƧǌĜl!ƒ

ǇJ lƧǌĜl!ƒ ÜDžƒƧǌǕƒ ƴŀĜƱdž Ü(1) Ʊ ÜDžƒƨƙ!Ǘƒ ŧōƧǓǉ Ǒ5 ƨōŋĂ!ƒ ÜǑǂƨ LJōƥ!ƒ ýĜdžŋ ƥĂdžơdž .18

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.ƧTǉ

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LJǍƥħ ÜƧƮǆ IJ lƧNjĜl!ƒ ÜǑħǀơ!ƒ Ǐ5ƱƮǆ ƗƶħƱǆ Ü(1) Ʊ ÜýǒǀǂŰƒ ƧNjƒǍƞ ÜĭƧNjɘŰƒ Ơ!ĜƮ .15

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ƥnjƶǆ ƘƒƧǍTǉǆ Ü(1) Ʊ Ü(Ɨ!Ĝ5ǂ!ƒ) ǑǉĜƛ!ƒ ǅƪl!ƒ ÜǑǆǘƪŰƒ NJl5!ƒ Ǒ5 LJĜǆư!ƒ ÜƷǒ5Ƥ!ƒ ǑǀƵ .16

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ǅǐǆƐNjƾǁƐ :ƑǐǆƑƙ

.1976 Ɨǉƪ! (43) ǅƿƧ ǑǉƥƧŰƒ ǑǉƥǆƗ!ƒ LJǍǉĜl!ƒ .1

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ǊŭǝƒƬƫǁ !ƑǀƟŬƐ :ƑƙǁƑƙ

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Abstract

Jarrar, Aws Mohammad. **The Legal Framework for the Creditor Recourse against the Guarantor in Financial Guarantee. A Study under Jordanian Civil Law. Master Thesis. Yarmouk University**. 2014. (supervisor: Dr.Nisreen Salamah Mahasneh

This study deals with the legal rules governing the return of the creditor on the sponsor under the financial bail according to the Jordanian Civil Law. Under the Jordanian Civil Law, the creditor may return on the debtor or the sponsor or both of them. Therefore, the position of the sponsor in bail contract is close to the position of the solidary debtor, unlike the case under the Egyptian Civil Law.

In addition, the study tackles the case where there are more than one sponsor (multiple sponsors), and whether the Jordanian legislator has complied with the same rule it adopts with regard to the case of one sponsor. Although, the Jordanian legislator allows returning on both the debtor and the sponsor, however, some exceptions to this general rule are provided for. It appeared through this study that the sponsor's obligation is appending to the debtor's obligation, in the sense that it is to be affected by all what affect the debtor's obligation being the original one. Here, the sponsor may invoke all defenses towards the creditor; some of these defenses are derived from the original obligation, others are related to the sponsor's obligation itself. Besides, the position of the Jordanian Civil Code as to the right of divestment is discussed.

Reference has been made to the Islamic jurisprudence, as the Jordanian legislator is highly influenced by it in relation to bail contract. Further, indication has been made to the position of the Egyptian Civil Law, as far as it is necessary. In conclusion, this study shows the points of strengths and weaknesses with regard to the rules that organize the right of the creditor to claim his right by directly returning to the sponsor.

Some results and recommendations are emerged out the study.